

(c)(1) After approval of a State operating permit program, the Administrator will suspend, in accordance with this part and part 70 of this chapter, federal issuance of Acid Rain permits for Phase II for sources and units subject to the State program.

(2) The Administrator will issue all Acid Rain permits for Phase I. However, the Administrator reserves the right to delegate the remaining administration of Acid Rain permits for Phase I to approved State operating permit programs.

§ 72.72 State permit program approval criteria.

A State operating permit program shall meet the following criteria concerning the Acid Rain Program. Any aspect of the State program or any implementation of the State program that is inconsistent with these criteria shall be grounds for disapproval or withdrawal of approval of the State program by the Administrator:

(a) *Non-Interference with Acid Rain Program.* The State operating permit program shall not include or implement any measures that would interfere with the Acid Rain Program. In particular, the State program shall not restrict or interfere with allowance trading and shall not interfere with the Administrator's decision on an offset plan. Aspects and implementation of the State program that would constitute interference with the Acid Rain Program, and are thus prohibited, include but are not limited to:

(1) Prohibitions, inconsistent with the Acid Rain Program, on the acquisition or transfer of allowances by an affected unit under the jurisdiction of the State permitting authority;

(2) Restrictions, inconsistent with the Acid Rain Program, on an affected unit's ability to sell or otherwise obligate its allowances;

(3) Requirements that an affected unit maintain a balance of allowances in excess of the level determined to be prudent by any utility regulatory authority with jurisdiction over the owners of the affected unit;

(4) Failing to notify the Administrator of any State administrative or judicial appeals of, or decisions covering, Acid Rain permit provisions that

might affect Acid Rain Program requirements;

(5) Issuing an order, inconsistent with the Acid Rain Program, interpreting Acid Rain Program requirements as not applicable to an affected source or an affected unit in whole or in part or otherwise adjusting the requirements;

(6) Withholding approval of any compliance option that meets the requirements of the Acid Rain Program; or

(7) Any other aspect of implementation that the Administrator determines would hinder the operation of the Acid Rain Program.

(b) The State operating permit program shall require the following:

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application—(A) Requirement to comply.* (1) The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

(2) The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain permit application.* A complete Acid Rain permit application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

(C) *Submission to the Administrator.* The State permitting authority shall submit a written notice of application completeness to the Administrator

within 10 working days following a determination by the State permitting authority that the Acid Rain permit application is complete.

(ii) *Draft permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part or, for a combustion or process source, subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) The State permitting authority shall prepare a statement of basis in accordance with the requirements for a statement of basis under § 72.64 of this part.

(C) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Notice to Administrator.* The State permitting authority shall submit a copy of the draft Acid Rain permit and the statement of basis to the Administrator and all other relevant portions of the operating permit that may affect the draft Acid Rain permit. This submission requirement will not be waived.

(iv) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. A notice shall be served on those persons required to receive notice under §§ 70.7(h) and 70.8(b) of this chapter.

(v) *Proposed Permit.* Following the public notice and comment period on a draft Acid Rain permit, the permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part or, for combustion or process sources, in accordance with subpart B of part 74 of this chapter or deny a proposed Acid Rain permit.

(vi) *Submittal to Administrator.* (A) The State permitting authority shall submit the proposed Acid Rain permit or denial of a proposed Acid Rain per-

mit to the Administrator in accordance with § 70.8(a) of this chapter, the provisions of which shall be treated as applying to the issuance or denial of a proposed Acid Rain permit.

(B) The Administrator will review the proposed Acid Rain permit or denial of a proposed Acid Rain permit in accordance with § 70.8(c) of this chapter, the provisions of which shall be treated as applying to the issuance or denial of a proposed Acid Rain permit.

(vii) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit or denial of a proposed Acid Rain permit, the State permitting authority shall or, under § 70.8(c) of this chapter (treated as applying to the issuance or denial of an Acid Rain permit), the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part.

(viii) *Effective Date of Acid Rain Permit.* Each source's Acid Rain permit issued by a State permitting authority under this section shall be effective for a period of 5 years.

(ix) *New Owners.* An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(x) Each Acid Rain permit (including a draft or proposed permit) shall contain all applicable Acid Rain requirements, shall be a complete and segregable portion of the operating permit, and shall not incorporate information contained in any other documents, other than documents that are readily available.

(xi) Invalidation of the Acid Rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the Acid Rain portion of the permit.

(xii) No Acid Rain permit (including a draft or proposed permit) shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with subpart B of this part.

(xiii) Notwithstanding any State law providing that a permit must be issued by default after a specified time, no Acid Rain permit shall be issued until the Administrator and other States have had an opportunity to review a proposed Acid Rain permit as provided in this section and § 70.8(b) of this chapter.

(xiv) Except as provided in § 72.73(b) and, with regard to combustion or process sources, in § 74.14(c)(6) of this chapter, the State permitting authority shall issue or deny an Acid Rain permit within 18 months of receiving a complete Acid Rain permit application submitted in accordance with § 72.21 or such lesser time approved under part 70 of this chapter.

(2) *Permit Revisions.* In acting on any Acid Rain permit revision, the State permitting authority shall follow the provisions and procedures set forth at subpart H of this part.

(3) *Permit Renewal.* The renewal of an Acid Rain permit for an affected source shall be subject to all the requirements of this subpart pertaining to the issuance of permits.

(4) *Acid Rain Program Forms.* In developing the Acid Rain portion of the operating permit, the permitting authority shall use the applicable forms or other formats prescribed by the Administrator under the Acid Rain Program; *provided* that the Administrator may waive this requirement in whole or in part.

(5) *Acid Rain Appeal Procedures.* (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part, parts 73, 74, 75, 76, 77 and 78 of this chapter, shall be conducted according to procedures established by the State under § 70.4(b)(3)(x) of this chapter. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under part 78 of this chapter and section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a

technology is a qualifying repowering technology.

(ii) Under no circumstances shall a State administrative appeal or judicial appeal of the Acid Rain portion of an operating permit be allowed more than 90 days (or such shorter period as provided by the applicable State appeals procedures) following respectively issuance of the Acid Rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(iii) The State permitting authority shall serve written notice on the Administrator of any State administrative or judicial appeal concerning as Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(iv) Any State administrative permit appeals procedures shall ensure that the Administrator may intervene as a matter of right in any permit appeal involving an Acid Rain permit provision or denial of an Acid Rain permit.

(v) The State permitting authority shall serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the Acid Rain permit or revoke the permit for cause in accordance with § 70.8 of this chapter.

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1)(i) or, with regard to combustion or process sources, § 74.14(c)(6) of this chapter shall be ground for filing an appeal.

(vii) No appeal concerning an Acid Rain requirement shall result in a stay of any provision of the Acid Rain permit for which a stay is barred under part 78 of this chapter.

(6) *Cooperation with Utility Regulatory Authority.* In considering any Acid Rain permit application, the State permitting authority shall ensure coordination with any utility regulatory authority with jurisdiction over the owners of the affected unit.